

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

UNITED STATES DISTRICT COURT

for the

District of

Division

United States District Court
Southern District of Texas
FILED

AUG 20 2020

David J. Bradley, Clerk of Court

Case No.

(to be filled in by the Clerk's Office)

David A. Cross

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

Aguaclil ~~Ed~~ Gonzalez
Darryl Coleman, Chief
Debra Schmidt, Asst. Chief
Classification Dept.
Lt. Clark

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

David ~~Allen~~ CROSS

All other names by which
you have been known:

ID Number

00323369

Current Institution

HARRIS CO. SHERIFF OFFICE JAIL

Address

701 N. SAN JACINTO ST

HOUSTON, TEXAS 77002

City

State

Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

AQUACIL ED GONZALEZ

Job or Title (*if known*)

SHERIFF

Shield Number

DON'T KNOW

Employer

HARRIS CO. SHERIFFS DEPT.

Address

701 N. SAN JACINTO ST.

HOUSTON

TX

77002

City

State

Zip Code

☒ Individual capacity☒ Official capacity

Defendant No. 2

Name

Darryl Coleman

Job or Title (*if known*)

Chief

Shield Number

DON'T KNOW

Employer

HARRIS CO. SHERIFFS DEPT.

Address

701 N. SAN JACINTO ST

HOUSTON

TX

77002

City

State

Zip Code

☒ Individual capacity☒ Official capacity

Defendant No. 3

Name

Job or Title (if known)

Shield Number

Employer

Address

Debra Schmidt
 ASST. Chief
 Don't know
 Harris Co. Sheriff's Dept.
 701 N. SAN JANCINTO St
 Houston TX 77002
City State Zip Code

☒ Individual capacity ☒ Official capacity

Defendant No. 4

Name

Job or Title (if known)

Shield Number

Employer

Address

Lt. Clark
 Classification Supv.
 Don't know
 Harris Co. Sheriff's Dept.
 701 N. SAN JANCINTO St
 Houston TX 77002
City State Zip Code

☒ Individual capacity ☒ Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

☐ Federal officials (a *Bivens* claim)

☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

8th Amend., 14th Amend.

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed. THE HEREIN MENTIONED EMPLOYEES KNEW OF AND WERE IN A SUPERVISORY POSITION TO CORRECT CLEAR VIOLATIONS OF MY CONSTITUTIONAL RIGHTS AND FAILED TO DO SO, SUCH IMPOSES LIABILITY FOR VIOLATION OF RIGHTS UNDER CONST.

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (check all that apply):

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☐ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Other (explain) COUNTY JAIL INMATE HARRIS CO, TX

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

WHILE BEING INCARCERATED AT THE HARRIS COUNTY JAIL, I WAS EXPERIENCING EXCRUCIATING BACK PAIN DUE TO AN INJURY FROM A CAR WRECK. I WAS TAKEN TO THE JAIL MEDICAL DEPT. WHERE I WAS SEEN BY A DOCTOR WHO PRESCRIBED PAIN MEDS AND PRESCRIBED BOTH LOW BUNK HOUSING RESTRICTIONS. CLASSIFICATION DEPT MOVE ME FROM 2-ROW TO 1-ROW AND SECURITY REFUSE TO HONOR MY REQUESTS OF 11

C. What date and approximate time did the events giving rise to your claim(s) occur?

AND TO LOW BUNK, BECAUSE I WAS ON A WALKER I FELL ONCE WHILE DESCENDING STAIRS ON 7-5-2020 AND GOING UP STAIRS ON 7-10-2020. BOTH TIMES I WAS INJURED AND TREATED IN MEDICAL. SUCH RESULTING FROM SECURITY AND CLASSIFICATION DEPT VIOLATING MY DOCTOR ORDERED MEDICAL RESTRICTIONS. ON 7-11-2020 I WAS MOVED TO TOP BUNK

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Who else saw what happened?)

ON 7-5-2020 AND 7-10-2020

WHEREAS I FELL DOWN STAIRS I WAS MEDICALLY RESTRICTED FROM CLIMBING AND I WAS ALSO ON A WALKER. I WAS FORCED BY SECURITY AND CLASSIFICATION DEPT. TO WALK UP AND DOWN STAIRS WHILE ON WALKER WHICH CAUSED ME SEVERE PAIN AND INJURY. SUBSEQUENTLY ON 7-11-2020 I WAS REHOUSED AND MOVED FROM 2N1 TO 2-F-1 ON A TOP BUNK AND HAD TO SLEEP ON THE FLOOR BECAUSE I COULD NOT CLIMB ONTO THE TOP BUNK DUE TO BACK PAIN. HOWEVER, I SHOULD HAVE BEEN HOUSED ON BOTTOM BUNK NOT TOP BUNK PER DOCTOR PRESCRIBED RESTRICTIONS

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

I EXACERBATED AND FURTHER INJURED BACK AND HIP INJURIES SUSTAINED IN CAR WRECK FALLING WHILE WALKING UP AND DOWN STAIRS. I WAS MEDICALLY RESTRICTED FROM CLIMBING. I HURT KNEE, BACK AND HIP WHEN I FELL CLIMBING STAIRS ON BOTH 7-5-2020 AND 7-10-2020 AND WHEN I WAS MOVED TO TOP BUNK ON 7-11-2020 I ENDURED EXCRUCIATING PAIN AS A RESULT OF SLEEPING ON THE FLOOR FOR OVER 2 WEEKS BECAUSE I COULD NOT CLIMB UP ON TOP BUNK. I WAS ASSIGNED TO, CONTRARY TO MEDICALLY PRESCRIBED RESTRICTIONS SHERIFFS DEPT DID NOT HONOR.

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes.

If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

I AM Suing all defendant(s) IN BOTH THEIR INDIVIDUAL AND OFFICIAL CAPACITIES FOR \$80,000/EIGHTY THOUSAND IN PUNITIVE DAMAGES, \$80,000/EIGHTY THOUSAND IN COMPENSATORY DAMAGES, \$1.00/ONE DOLLAR IN NOMINAL DAMAGES FOR PAIN AND SUFFERING AND INJURIES SUSTAINED WHILE CLIMBING STAIRS WITH BACK INJURY AND ON WALKER AND FALLING DOWN STAIRS. IN FURTHERANCE OF DEFENDANT'S CEASE SHOWING DELIBERATE INDIFFERENCE AND GROSS DISREGARD FOR MY SERIOUS MEDICAL NEEDS AND DOCTOR PRESCRIBED RESTRICTIONS AND ANY OTHER ACTION THE COURT DEEMS JUST AND PROPER. RESPECTFULLY REQUESTED

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

- A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

HARRIS COUNTY SHERIFFS
OFFICE JAIL; 701 N. SAN JACINTO ST.
HOUSTON, TEXAS 77002

- B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

- C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☐ Yes

☐ No

☒ Do not know

If yes, which claim(s)?

- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

- E. If you did file a grievance:

1. Where did you file the grievance? Harris County Sheriffs
Office Jail Grievance Board
GRIEVANCE #34746

2. What did you claim in your grievance? Deliberate indifference
to my doctor prescribed medical restric-
tions and/or serious medical needs.

3. What was the result, if any? NONE actually. Simply
told it was CLASSIFICATION fault that
my doctor prescribed medical restric-
tions were ignored, hence, resulting
in my injury, pain, and suffering.

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

APPEALED TO GRIEVANCE BOARD.
GRIEVANCE PROCESS COMPLETED TO
NO AVAIL. GRIEV. APPEAL #35102

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

GRIEV. APPEAL # 35102
(SEE) GRIEVANCE # 34746 (ON FILE)
GRIEVANCE PROCESS COMPLETED.

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this "three strikes rule"?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes

☒ No

- B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition. _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

- C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

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☐ Yes☒ No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes☐ No

If no, give the approximate date of disposition _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

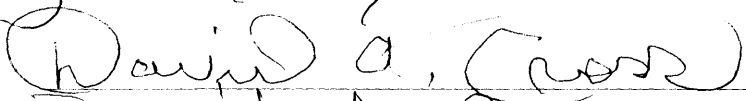
IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: August 14th, 2020

Signature of Plaintiff 

Printed Name of Plaintiff David A. Cross

Prison Identification # 00323369

Prison Address 701 N. SAN JACINTO ST.
HOUSTON TX 77002

City State Zip Code

B. For Attorneys

Date of signing: _____

Signature of Attorney _____

Printed Name of Attorney _____

Bar Number _____

Name of Law Firm _____

Address _____

City State Zip Code

Telephone Number _____

E-mail Address _____

HARRIS COUNTY SHERIFF'S OFFICE JAIL

Name: David A. Cross

SPN: 00323369 Cell: 8-5-3

Street 781 N. SAN JACINTO

HOUSTON, TEXAS 77002



INDIGENT



U.S. POSTAGE PITNEY BOWES

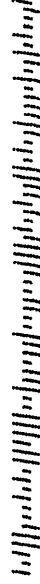


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United States Courthouse
515 RUSK ST.
HOUSTON, TEXAS 77002

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David J. Bradley, Clerk of Court



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